

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SMURFIT-STONE CONTAINER
ENTERPRISES, INC.,

Defendant.

Civil No.

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought pursuant to Section 113(b) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(b), for injunctive relief and the assessment of civil penalties against Defendant Smurfit Stone Container Enterprises, Inc., doing business as Smurfit-Stone Flexible Packaging ("Smurfit") to obtain injunctive relief and civil penalties for violations of the following: applicable provisions of the federally-approved and federally-enforceable Illinois State Implementation Plan ("SIP"), including the Illinois Pollution Control Board regulations codified at 35 Ill. Admin. Code Parts 205 and 218; applicable National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), codified at 40 C.F.R. Part 63; Smurfit's duty to provide information to EPA upon request pursuant to Section 114 of the Act, 42 U.S.C. § 7414; and operating permit program requirements pursuant to Title V of the Act, 42 U.S.C. §§ 7661a-7661f.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. This Court also has jurisdiction over the parties to this action.

3. Venue is appropriate in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because Smurfit does business in this district, and the claims arose within this district.

NOTICE AND AUTHORITY

4. Notice of the commencement of this action has been given to the State of Illinois, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

5. Authority to bring this action is vested in the United States Department of Justice, pursuant to 28 U.S.C. §§ 516 and 519 and 42 U.S.C. § 7605.

DEFENDANT

6. Smurfit is a Delaware corporation that at the times pertinent to this Complaint owned and operated a printing facility located at 1128 East Tower Road, Schaumburg, Illinois (the "Facility"). At the Facility, there are, inter alia, four packaging rotogravure lines (nos. 100, 110, 200 and 210) and one wide-web flexographic printing line (no. 410) which emit pollutants regulated by the CAA. These include, but are not limited to, volatile organic material ("VOM") and methyl ethyl ketone ("MEK").

7. Smurfit is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

8. The CAA was enacted to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of the population.

National Ambient Air Quality Standards

9. On April 30, 1971, in accordance with Section 109 of the Act, 42 U.S.C. § 7409, the Administrator of the EPA ("Administrator") promulgated National Ambient Air Quality

Standards ("NAAQS") for several pollutants, including ozone. These standards are published at 40 C.F.R. Part 50. The NAAQS establish primary air quality standards to protect the public health and secondary air quality standards to protect the public welfare.

10. Ground-level ozone is formed when VOM reacts with nitrogen oxides in the presence of sunlight. As a precursor to ozone, VOM is a regulated pollutant.

State Implementation Plan - VOMs

11. To achieve the objectives of the NAAQS and the Act, Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires each state to submit to the Administrator for approval a plan that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region in the state. This plan is known as a SIP.

12. The federally-approved Illinois SIP is the "applicable implementation plan," within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b), governing the operations of the Facility.

13. On September 9, 1994, EPA approved 35 Ill. Admin. Code Part 218 as part of the federally-enforceable SIP for the State of Illinois. 59 Fed. Reg. 46562. This includes 35 Ill. Admin. Code §§ 218.401-404, Subpart H, which contains VOM requirements applicable to printing and publishing operations.

14. 35 Ill. Admin. Code § 218.401(c)(2) and (c) (4)(C) provide that no owner or operator of a subject flexographic printing line which uses an incineration system and is equipped with a capture and control device shall operate the subject printing line unless the owner or operator reduces the captured VOM emissions by at least 90 percent by weight, and the capture system and control device provide an overall reduction of at least 60 percent.

15. 35 Ill. Admin. Code § 218.401(c)(4)(B) provides that no owner or operator of a subject packaging rotogravure printing line equipped with a capture system and control device shall operate the subject printing line unless the owner or operator reduces the captured VOM emissions by at least 90 percent by weight, and the capture system and control device provide an

overall reduction of at least 65 percent.

16. 35 Ill. Admin. Code § 218.402(a) states that the limitations of 35 Ill. Admin. Code §218.401 apply to all flexographic and rotogravure printing lines at a subject source if the maximum theoretical emissions of VOM from all printing lines ever exceed 100 tons per year, or the potential to emit is 25 tons per year or more of VOM.

State Implementation Plan - ERMS

17. On October 12, 2001, EPA approved 35 Ill. Admin. Code Part 205, Emissions Reduction Market System (ERMS), as part of the federally-enforceable SIP for the State of Illinois. 66 Fed. Reg. 52359. This rule establishes a trading program for major sources of VOM emissions.

18. 35 Ill. Admin. Code § 205.300(a) states that, by October 31 of each year, owners and operators of sources participating in the ERMS program that generate VOM emissions from less than 10 emissions units shall submit, as a component of an Annual Emissions Report, seasonal emissions information for each seasonal allotment period.

19. 35 Ill. Admin. Code § 205.300(b) states that the seasonal emissions component of the Annual Emissions Report shall contain, inter alia, the source's actual seasonal emissions for the preceding seasonal allotment period for each emission unit emitting or capable of emitting VOM.

20. 35 Ill. Admin. Code § 205.150(b) establishes a "reconciliation period" during which the participating source shall: 1) compile data of actual VOM emissions during the immediately preceding seasonal allotment period; and 2) submit its seasonal emissions component of its Annual Emissions Report, in accordance with Section 205.300. This provision also states that the reconciliation period is from October 1 to December 31, annually.

21. 35 Ill. Admin. Code § 205.150 (c)(1) states that, at the end of each reconciliation period, each participating source shall hold allotment trading units (ATUs) in an amount not less than its VOM emissions during the preceding seasonal allotment period.

22. 35 Ill. Admin. Code § 205.400 provides that Illinois EPA shall determine each

participating source's allotment per seasonal allotment period.

NESHAP Requirements

23. On May 30, 1996, EPA promulgated the NESHAP for the Printing and Publishing Industry. 61 Fed. Reg. 27140. EPA codified these regulations at 40 C.F.R. Part 63, Subpart KK ("Subpart KK regulations").

24. EPA promulgated General Provisions for all NESHAP sources on March 16, 1994. 59 Fed. Reg. 12430. EPA codified these regulations at 40 C.F.R. Part 63, Subpart A.

25. 40 C.F.R. § 63.820 states that the Subpart KK regulations apply to, inter alia, each new and existing facility that is a major source of HAP, as defined in 40 C.F.R. § 63.2, at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated.

26. A "major source" for purposes of the NESHAP is defined in Subpart A as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs, with certain exceptions not relevant here. 40 C.F.R. § 63.2.

27. A "hazardous air pollutant" for purposes of the NESHAP is any air pollutant listed in or pursuant to Section 112(b) of the Act, 42 U.S.C. 7412(b). 40 C.F.R. § 63.2.

28. At all times pertinent to this Complaint until December 19, 2005, MEK was a HAP listed in Section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1).

29. 40 C.F.R. § 63.825(b) establishes HAP emission standards applicable to owners and operators of subject rotogravure units.

EPA's Authority to Require Emission Sampling Under CAA Section 114

30. In order to determine whether a person is in violation of a SIP requirement or other CAA requirement or standard, EPA is authorized, pursuant to 42 U.S.C. § 7414, to require any person who owns or operates an emission source to, among other things, sample such

emissions in such a manner as EPA may require.

CAA Title V Permitting Requirements

31. Title V of the Act, 42 U.S.C. §§ 7661a - 7661f, establishes an operating permit program for major stationary sources of air pollution. Such operating permits must include emission limitations and such other conditions as are necessary to assure compliance with applicable CAA requirements.

32. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each State must submit to the Administrator of EPA a permit program meeting the requirements of Title V.

33. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs, as codified at 40 C.F.R. Part 70.

34. EPA promulgated final approval of the Illinois Title V program on March 7, 1995 (60 Fed. Reg. 12478), and the program became effective on that date.

35. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

36. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or any rule promulgated, issued or approved under Title V of the Act. In addition, 40 C.F.R. § 70.11 authorizes EPA to bring an action for injunctive relief and/or civil penalties for violations of any permit conditions.

Title V Permit for the Facility

37. On April 28, 1999, the Illinois Environmental Protection Agency issued a Title V permit to Smurfit.

38. Smurfit's Title V permit, in condition 5.5.2, requires that emissions of HAPs

be less than 10 tons/year for each individual HAP and less than 25 tons/year for all HAPs combined.

39. Smurfit's Title V permit also contains various requirements related to the ERMS program. These include: Condition 6.3, which requires Smurfit to hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period; and condition 6.7, which requires Smurfit to submit Annual Emission Reports that contain actual seasonal emissions of VOM from the source no later than October 31 of each year for the preceding annual allotment period.

40. Smurfit's Title V permit, in condition 7.1.3(c), requires that Smurfit operate its rotogravure unit nos. 100, 110, 200, and 210 with a thermal afterburner system that reduces the captured VOM emissions by at least 90%, and with a combination of the capture system and thermal afterburner providing an overall reduction in VOM emissions of at least 65%.

41. Smurfit's Title V permit, in condition 7.1.3(d), requires that Smurfit operate its flexographic unit no. 410 with a catalytic afterburner system that reduces the captured VOM emissions by at least 90%; and with a combination of the capture system and thermal afterburner providing an overall reduction in VOM Emissions of at least 60%.

CAA Enforcement Authority

42. A person's failure to comply with any approved regulatory provision of a SIP provision is a violation of the Act subject to enforcement under CAA Section 113(b)(1), 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23.

43. A person's failure to comply with an approved regulatory provision of the NESHAP is a violation of the Act subject to enforcement under CAA Section 113(b)(2), 42 U.S.C. § 7413(b)(2).

44. A person's failure to comply with Section 114 requirements is a violation of the Act subject to enforcement under CAA Section 113(b)(2), 42 U.S.C. § 7413(b)(2)

45. A person's failure to comply with any requirement of a Title V permit is a violation

of the Act subject to enforcement under CAA Sections 113(b)(2) and 502, 42 U.S.C.

§§ 7413(b)(2) and 7661a(a), and 40 C.F.R. §70.11.

46. Under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), when the Administrator finds that a person has violated a requirement of an applicable SIP, he or she shall notify that person, as well as the state in which the person operates, of such finding. The Administrator is then authorized to commence a civil action, under Section 113(b) of the Act, 42 U.S.C.

§ 7413(b), for violations charged in the Notice of Violation ("NOV") at any time more than thirty days from the date the NOV was issued.

47. On November 22, 2002, EPA issued an NOV to Smurfit, citing violations of the Illinois SIP at the Facility. On June 3, 2003, EPA issued an NOV to Smurfit citing violations of the Illinois SIP and a Finding of Violation (FOV) to Smurfit citing violations of the NESHAP, Section 114 of the Act and Title V of the Act at the Facility. On those dates, EPA also notified the State of Illinois of the issuance of the NOVs and FOV.

48. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties not to exceed \$25,000 per day of violation for violations of the Act, including violations of a SIP and Title V. Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), civil penalties of up to \$27,500 per day per violation may be assessed for violations occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 per day per violation for violations occurring after March 15, 2004.

FIRST CLAIM FOR RELIEF

(State Implementation Plan - VOM/Flexographic Line)

49. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

50. The maximum theoretical emissions of VOM from all Smurfit's printing lines at the Facility exceed 100 tons per year, and the potential to emit is 25 tons per year or more of VOM.

51. At all times relevant to this Complaint up to October 9, 2004, Smurfit used a catalytic afterburner as its control device for the Facility's flexographic line no. 410.

52. From August 1, 2001 through October 6, 2002, Smurfit operated the catalytic afterburner at its flexographic line no. 410 with a VOM destruction efficiency of less than 90 percent by weight, in violation of 35 Ill. Admin. Code § 218.401(c)(2) and (c)(4)(C).

53. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004.

SECOND CLAIM FOR RELIEF

(State Implementation Plan - VOM/Rotogravure Lines)

54. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

55. At all times relevant to this Complaint up to October 4, 2004, Smurfit used a thermal oxidizer as its control device for the Facility's rotogravure line nos. 100, 110, 200, and 210.

56. From August 1, 2001 to October 4, 2004, Smurfit operated the thermal oxidizer at its rotogravure printing lines nos. 100, 110, 200, and 210 with a VOM destruction efficiency of less than 90 percent by weight, in violation of 35 Ill. Admin. Code § 218.401(c)(4)(B).

57. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF

(State Implementation Plan - ERMS/ATUs)

58. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

59. Smurfit was an owner or operator of a source participating in the ERMS program that generates VOM emissions from less than 10 emissions units.

60. Illinois EPA determined that, under 35 Ill. Adm. Code § 205.400, Smurfit's allotment for the years 2000, 2001, and 2002 at the Facility was 200 ATUs of VOM.

61. Smurfit emitted seasonal emissions requiring it to hold greater than 200 ATUs for the years 2000, 2001, and 2002 at the Facility.

62. Smurfit failed to acquire sufficient ATUs by the end of the 2000, 2001, and 2002 reconciliation periods for each year, in an amount not less than its seasonal VOM emissions for each such year, in violation of 35 Ill. Admin. Code § 205.150(c)(1) as of December 31 of each such year. Smurfit continues to fail to acquire sufficient ATUs for the 2000, 2001, and 2002 seasonal allotment periods, and thus remains in continuing violation of 35 Ill. Admin. Code § 205.150(c)(1).

63. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

FOURTH CLAIM FOR RELIEF

(State Implementation Plan - ERMS/Annual Emission Reports)

64. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

65. Smurfit's Annual Emission Reports for 2000, 2001, and 2002 did not contain the actual seasons emissions of VOM from the Facility.

66. Smurfit failed to provide the actual emissions of VOM from the Facility for the 2000, 2001, and 2002 seasonal allotment periods in its Annual Emission Report for each such year, in violation of 35 Ill. Admin. Code 205.300(b)(1), from October 31, 2000 to October 7, 2005.

67. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

FIFTH CLAIM FOR RELIEF

(NESHAP)

68. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

69. The Facility is a major source of HAP as defined in 40 C.F.R. § 63.2, at which publication rotogravure and wide-web flexographic printing presses are operated.

70. Beginning on or about September 1999 and continuing up to December 19, 2005, Smurfit violated the applicable compliance demonstration, monitoring, recordkeeping and reporting requirements set forth in 40 C.F.R. §§ 63.825 through 63.830.

71. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004.

SIXTH CLAIM FOR RELIEF

(Section 114 Requirements)

72. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

73. On July 11, 2002, EPA issued, and on July 18, 2002, Smurfit received, a Request for Information to Smurfit under Section 114 of the Act. Under the Request for Information, Smurfit was required to conduct certain tests within 60 days of Smurfit's receipt of the Request for Information, and to submit the test report to EPA within 90 days of Smurfit's receipt of the Request for Information.

74. Smurfit did not conduct the testing required by the Request for Information until September 23-25, 2002; it did not submit a complete test report to EPA until January 29, 2003.

75. Smurfit's failure to timely conduct the tests and submit the test report to EPA constitutes a violation of Section 114 of the Act, 42 U.S.C. § 7414.

76. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004.

SEVENTH CLAIM FOR RELIEF

(Title V Permit - Violations of Permit Condition/HAP Limits)

77. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

78. Beginning on or about September 1999 and continuing up to December 19, 2005, Smurfit violated Section 5.5.2 of its Title V permit in that it emitted more than 10 tons/year of MEK, an individual HAP.

79. Smurfit's violations of Section 5.5.2 of its Title V permit constitute violations of

Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b).

80. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

EIGHTH CLAIM FOR RELIEF

(Title V Permit - Violations of Permit Condition/ATUs)

81. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

82. Smurfit violated Section 6.3 of its Title V permit for the 2000, 2001, and 2002 Seasonal Allotments in that by December 31 of each such year, Smurfit failed to hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period. Smurfit continues to fail to acquire sufficient ATUs for the 2000, 2001, and 2002 seasonal allotment periods, and thus remains in continuing violation of its Title V permit.

83. Smurfit's violations of Section 6.3 of its Title V permit constitute violations of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b).

84. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

NINTH CLAIM FOR RELIEF

(Title V Permit - Violations of Permit Condition/Annual Emission Reports)

85. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

86. Beginning October 31, 2000 to October 7, 2005, Smurfit violated Condition 6.7 of its Title V permit in that it failed to submit to Illinois EPA an Annual Emissions Report that contained the actual seasonal emissions of VOM from its printing lines for the 2000, 2001, and 2002 Seasonal Allotment Periods.

87. Smurfit's violations of Section 6.7 of its Title V permit constitute violations of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b).

88. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

TENTH CLAIM FOR RELIEF

(Title V Permit - Violations of Permit Condition/Thermal Afterburner System)

89. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

90. At all times relevant to this Complaint up to October 18, 2004, Smurfit violated condition 7.1.3(c) of its Title V permit in that it did not operate its rotogravure unit nos. 100, 110, 200 and 210 with a thermal afterburner system that reduced the captured VOM emissions by at least 90% and a combination of capture system and thermal afterburner providing an overall reduction of at least 65%.

91. Smurfit's violations of Section 7.1.3(c) of its Title V permit constitute violations of

Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b).

92. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring after March 15, 2004.

ELEVENTH CLAIM FOR RELIEF

(Title V Permit - Violations of Permit Condition/Catalytic Afterburner)

93. Paragraphs 1 through 48 are incorporated herein by reference as if fully set forth below.

94. From at least August 2001 through October 6, 2002, Smurfit violated condition 7.1.3(d) of its Title V permit in that it did not operate its flexographic printing line with a catalytic afterburner system that reduced the captured VOM emissions by at least 90% and a combination of capture system and thermal afterburner providing an overall reduction of at least 60%.

95. Smurfit's violations of Section 7.1.3(d) of its Title V permit constitute violations of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b).

96. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), Smurfit is liable for civil penalties of up to \$27,500 per day for each violation of any requirement of the CAA occurring between January 30, 1997, and March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests that this Court:

1. Issue an injunction requiring Smurfit to remedy its past and current

noncompliance with the Clean Air Act, the Illinois SIP, Section 114 requirements, the NESHAP, and Title V requirements, and to comply prospectively with the applicable requirements;

2. Assess civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997, and March 15, 2004, and of up to \$32,500 per day for each violation occurring after March 15, 2004;

3. Award Plaintiff its costs and disbursements in this action; and

4. Grant such other relief as may be appropriate.

Respectfully submitted,

Dated: _____

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice

Dated: _____

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